

TO: Honorable Anthony J. Scirica, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable A. Thomas Small, Chair
Advisory Committee on Bankruptcy Rules

DATE: May 15, 2001

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 15-16, 2001, in New Orleans, Louisiana. The Advisory Committee considered public comments regarding proposed amendments to the Bankruptcy Rules that were published in August, 2000.

The proposed amendments published in 2000 include revisions to seven Bankruptcy Rules (Rules 1004, 2004, [2014 - withdrawn], 2015, 4004, 9014, and 9027). Also proposed were a new rule, Rule 1004.1, and amendments to Official Form 1. The Advisory Committee received twenty-four written comments on the proposals. Several of the comments were offered on behalf of groups, including bankruptcy judges from several districts, the Commercial Law League of America, the National Bankruptcy Conference, the Insolvency Committee of the State Bar of California, Committees of the Association of the Bar of the City of New York, and Bar Association Committees from Detroit and the State of Michigan.

A public hearing was held in Washington, D.C. on January 26, 2001, to consider the proposals. Four witnesses were scheduled to

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testify at the hearing, but Judith Greenstone-Miller, Esq., was unable to attend. Judy B. Calton, Esq., testified in place of Ms. Greenstone-Miller. Ms. Calton's testimony was offered on behalf of the Commercial Law League (for Ms. Greenstone-Miller), and on behalf of the Committees of the State Bar of Michigan and the Detroit Metropolitan Bar Association. Robert A. Greenfield, Esq., testified on behalf of the National Bankruptcy Conference. Professor Todd Zywicki of George Mason University School of Law testified in his personal capacity at the public hearing.

At the March 2001 meeting, the Advisory Committee considered the written comments and the testimony presented at the public hearing. The Advisory Committee approved each of the proposed amendments to the rules and will present them to the Standing Committee at its June 2001 meeting for final approval and transmission to the Judicial Conference. The Advisory Committee also will present amendments to Official Forms 1 (Voluntary Petition) and 15 (Order Confirming Plan) to the Standing Committee for final approval and transmission to the Judicial Conference.

The Advisory Committee also approved a preliminary draft of proposed amendments to Bankruptcy Rules 1007, 2003, 2009, 2016, and 7007.1, and will present them to the Standing Committee at its June 2001 meeting with a request that they be published for comment. The Advisory Committee also approved a preliminary draft of proposed amendments to Official Forms 1 (Voluntary Petition), 5 (Involuntary Petition), and 17 (Notice of Appeal), and will present them to the Standing Committee at its June 2001 meeting with a request that they be published for comment.

II. Action Items

- A. Proposed Amendments to Bankruptcy Rules 1004, 2004, [2014 - withdrawn], 2015, 4004, 9014, and 9027, Proposed New Rule 1004.1, and Proposed Amendments to Official Forms 1 and 15 Submitted for Final Approval by the Standing Committee and Transmittal to the Judicial Conference.

1. *Public Comment.*

The preliminary draft of the proposed amendments to the Federal Rules of Bankruptcy Procedure and related committee notes were published for comment by the bench and bar in August 2000, and a public hearing on the preliminary draft was held on January 26, 2001. Three persons testified at the public hearing held in Washington, D.C.

There were twenty-four written comments received concerning the proposed amendments to the rules. These comments, and the testimony provided at the public hearing are summarized on a rule-by-rule basis following the text of each rule set out below. The Advisory Committee reviewed these comments and the testimony, and made several revisions to the published draft. The post-publication revisions are identified under the heading Changes Made After Publication and Comments.

2. *Synopsis of Proposed Amendments:*

- (a) Rule 1004 is amended to clarify that the rule implements § 303(b)(3)(A) of the Bankruptcy Code and is not intended to establish any substantive standard for the commencement of a voluntary case by a partnership.
- (b) Rule 1004.1 is added to set out the manner in which a case is commenced on behalf of an infant or incompetent person. Rule 1004.1 is derived from Rule 17(c) F.R. Civ. P.
- (c) Rule 2004 is amended to clarify that an examination ordered under that rule may be held outside of the district in which the case is pending. The court where the examination will be held issues the subpoena, and it is served in

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